

THE LAW OFFICE OF SHAWN SHEARER, P.C.

3839 MCKINNEY AVENUE, SUITE 155-254

DALLAS, TEXAS 75204

OFFICE: (214) 434-1594

SHAWN@SHEARERLAW.PRO

February 2, 2018

Via ECF

Honorable Frederic Block, U.S.D.J.
U.S District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Barger v. First Data Corporation et al.* - Civil Action No. 1:17-cv-4869
NOTICE OF BRIEFING SCHEDULE
Plaintiff's Motion for Partial Judgment on the Pleadings Pursuant to Rule 12(c)

Dear Judge Block:

A pre-motion conference with respect to the Plaintiff's proposed Rule 12(c) motion in the above referenced case was held on January 26, 2018. After careful consideration of that discussion, the Plaintiff still desires to move forward with his motion as all of the facts required to adjudicate the Defendants' liability for interfering with Plaintiff's rights under the FMLA are admitted in the Answer.

Plaintiff's counsel proposed the following briefing schedule to Defendants' counsel:

February 2, 2018 - Motion delivered by Plaintiff to Defendants
February 16, 2018 - Opposition delivered by Defendants to Plaintiff
February 23, 2018 - Reply delivered by Plaintiff to Defendants

Counsel for the Defendants advised Plaintiff's counsel that in the Defendants' view, matters outside the pleading are likely to be considered, the motion is likely to be converted to a motion under Rule 56, and the opposition would not be due until 14 days after the close of discovery (September 14, 2018). Counsel for the Defendants indicated that I should inform you that they object to the Plaintiff's proposed briefing schedule because good cause exists to extend the time for any opposition until after completion of discovery.

Plaintiff disagrees with Defense counsel's assessment. Defense counsel has not even received the Motion. Plaintiff does not believe any matters outside of the Defendant's admissions in the pleadings and the exhibits and documents attached to the to the pleadings are required to adjudicate liability.

Very truly yours,

/s/ Shawn E. Shearer
Attorney for the Plaintiff